

REMARKS

Reconsideration and continued examination of the present application are respectfully requested. The amendment to the claims further define what applicants regard as their invention. Full support for the amendment can be found throughout the present application, for instance, at pages 9 and 10 as well as the examples. Furthermore, no new questions of patentability are raised by this amendment since the Examiner has considered and examined a broader scope in the past. Furthermore, the amendment places the application in condition for allowance or at the very least in a better condition for appeal. Accordingly, entry of this amendment is respectfully requested.

At page 3 of the Office Action, the Examiner rejects claims 23 and 24 under 35 U.S.C. § 102(b) as being anticipated by Ervin et al. (U.S. Patent No. 3,819,463). The Examiner further rejects claims 23, 24, and 32 under 35 U.S.C. § 102(b) as being anticipated by the French patent (French Patent Application No. 2,160,422). While the Examiner states that the disclosures are not "exactly equivalent," the Examiner concludes that the disclosures of the patents with respect to the rejections are equivalent. The Examiner further asserts that Ervin et al. shows a copolymer containing vinylidene chloride along with ethyl acrylate and other polymers. The Examiner does appear to appreciate that the French patent and Ervin et al. only show an aqueous dispersion of a latex binder containing certain polymers. For the following reasons, this rejection is respectfully traversed.

As indicated previously, the arguments presented herein are with respect to Ervin et al. but throughout this response, these arguments apply to the French patent. As indicated, Ervin et al. relates to the formation of a backed carpet wherein the foam layer is formed by an aqueous dispersion of a latex binder with an expandable synthetic resinous microspheres. Unlike the claimed

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invention, Ervin et al. does not use a thermoplastic material that contains a polymer or copolymer of a vinyl compound along with at least one plasticizer. The use of a plasticizer with vinyl based compounds is quite different from the aqueous based latex materials used in Ervin et al. This is further supported by the reference relied upon by the Examiner entitled "Carpet Substrates" wherein at page 87, there is a distinct difference shown between latex materials and vinyl based materials. Accordingly, the textile substrate of the claimed invention is not taught by Ervin et al. or the French patent.

Furthermore, as explained to the Examiner previously, the present application at pages 1-4, clearly show the disadvantages of latex binders and the reasons why they are not commercially used when making modular tiles or six-foot wide roll goods. These reasons include dimensional stability requirements needed for these types of carpets. Not surprisingly, Ervin et al. does not teach or suggest modular tiles or six-foot wide roll goods anywhere in the patent. Accordingly, for these reasons, this rejection should be withdrawn.

At page 4 of the Office Action, the Examiner rejects claims 58, 59, and 61 under 35 U.S.C. § 102(b) as being anticipated by Ervin et al. and the French patent. The Examiner acknowledges that these claims as pending are not taught by the previously relied upon Slosberg and Wentworth patents and the Examiner has withdrawn these rejections. The Examiner, however, now takes the position that Ervin et al. and the French patent anticipate the claimed invention. Furthermore, the Examiner now asserts for the first time that, with respect to claim 58, the use of the phrase "casted on" and the use of the phrase "expanded" are method limitations within an article claim. Thus, the Examiner concludes that these limitations are not given patentable weight at this time. For the following reasons, this rejection is respectfully traversed.

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The Examiner's position with respect to not giving patentable weight to the various recitations in claims 58 and 59 is contrary to the Examiner's expressed position set forth in the first Office Action dated August 2, 2000. At page 5 of the first Office Action, the Examiner expressly gave weight to these limitations and even addressed these limitations in the rejection. Thus, the Examiner has taken a contrary view in this final Office Action which at a minimum, would mandate the removal of the finality of this Office Action since this new position was not mandated by any amendment by applicants. (Applicants are requesting the removal of the finality). Neither of these terms were amended by applicants. Furthermore, the Examiner's previous understanding of the claims clearly indicates that these limitations were understood by the Examiner as limitations to an article claim and the Examiner's altered position at this time is not supported by the record. Applicants' attorney attempted to contact the Examiner on this issue and other issues and the Examiner left a message with the undersigned's secretary indicating that the Examiner did not wish to have an interview to discuss any of the issues involving this application. Thus, applicants are now requesting the removal of the finality of the Office Action in view of this position and the Examiner's reliance on newly cited references that form a part of the § 102 rejection as shown later in this response.

The term "casted on" clearly describes the physical state and the interaction that is occurring between the secondary backing and the primary backing. When a secondary backing is casted onto a primary backing, this is a type of adherence between the two layers which is clearly understood by one skilled in the art and the Examiner in the first Office Action.

Furthermore, with respect to the term "expanded" again, this term explains the physical state of the secondary backing and this term is clearly understood by those skilled in the art.

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Contrary to the Examiner's new position on this matter, the claim does not recite the method step of "expanding" but recites the physical state that exists in the product, namely an "expanded state." Again, the Examiner's previous understanding of this phrase and the meaning it provided to an article claim reflected by the Examiner's clear understanding of this term for purposes of an article claim.

Since these two phrases clearly have a meaning for article claims and in view of the Examiner's admission that the Ervin et al. patent and French patent do not teach or suggest these limitations, this rejection should be withdrawn and these claims are clearly in condition for allowance. Further, as mentioned above, should the Examiner decide to maintain this rejection, the Examiner is respectfully requested to remove the finality of this rejection in view of the Examiner's new position taken in this matter which was not mandated by any amendment by applicants.

At page 5 of the Office Action, the Examiner rejects claims 66 and 67 under 35 U.S.C. § 102(b) as being anticipated by Ervin et al. and the French patent. The Examiner asserts that these claims limit the secondary backing to a closed-cell foam. The Examiner expressly admits that Ervin et al. and the French patent do not teach that foams are closed cell but makes the argument that it is "reasonable to presume that the claimed invention is inherent to the cited art." The Examiner in an effort to support this § 102(b) then relies on a newly cited document which does not form part of the rejection. In particular, the Examiner relies on particular passages from "Principles of Polymer Systems" and asserts that closed-cell foams would inherently be present in Ervin et al. and the French patent. For the following reasons, this rejection is respectfully traversed.

To begin with, the rejection under 35 U.S.C. § 102(b) should be withdrawn since the Examiner is relying on more than one reference to make a conclusion as to the patentability of the

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claimed invention. By the Examiner's own admission closed-cells and open-cells can exist and the Examiner has provided no foundation to show that each single reference of Ervin et al. and the French patent inherently have closed-cell foam. In fact, the Examiner has admitted that it could be either. Thus, the only way the Examiner can support this rejection is by combining the Ervin et al. and French patent with a secondary reference which would immediately render the § 102(b) rejection as improper since more than one reference is being relied upon by the Examiner. For this reason alone, the §102(b) rejection should be withdrawn since, by the Examiner's own admissions, Ervin et al. and the French patent do not teach the claimed invention.

Furthermore, claim 66 is dependent upon claim 58. As discussed above, the Examiner has not shown how Ervin et al. or the French patent teach the claim limitation set forth in claim 58. The differences emphasized above in the above rejection apply equally here and for this reason as well, the rejection of claim 67 should be withdrawn.

In addition, claim 66 is dependent on claim 23 and as set forth above, Ervin et al. and the French patent do not teach a secondary backing containing a thermoplastic material having a vinyl-based compound along with at least one plasticizer. For this reason as well, this rejection should be withdrawn.

Finally, the Examiner's reliance on the article from "Principles of Polymer Systems" does not support the Examiner's position with respect to this particular subject matter. As recognized by the Examiner, claims 66 and 67 relate to textile substrates having the particular components recited in the claims. The particular passage relied upon by the Examiner, namely at page 362 is not related to textile substrates and only mentions "foamed polymeric materials." Clearly, one skilled in the art

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would not consider this article sufficient for purposes of concluding that this would apply to textile substrates since textile substrates are not even mentioned in this article.

For the various reasons set forth above, this rejection should be withdrawn.

At page 6 of the Office Action, the Examiner then rejects claim 25 under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Ervin et al. and the French patent as applied to claim 23 above. Furthermore, the Examiner rejects claims 64 and 65 in the same manner. The Examiner in this rejection then relies on a new reference, namely "Carpet Substrates" to argue that the term "carpets" does not exclude carpet tiles. With respect to claims 64 and 65, the Examiner asserts that these claims are anticipated by or rendered obvious because the reference to carpet includes broadloom, wide roll, and tile carpet. Furthermore, the Examiner asserts, without any support, that all tile carpet is merely broadloom or wide roll carpet with a specialized backing and thus carpet tiles would have been obvious over the cited generic "carpet." For the following reasons, these rejections are respectfully traversed.

To begin with, the Examiner's reliance on the newly cited reference of "Carpet Substrates" is clearly used as a secondary reference and therefore the rejections under 35 U.S.C. § 102(b) would be improper since more than a single reference is being relied upon in the § 102 rejection. Second, the Examiner's reliance on this newly cited reference would also mandate the removal of the finality of the Office Action since the reliance on this reference was not mandated by any amendment by applicants. Accordingly, for this reason alone the § 102 should be withdrawn and the finality of the Office Action should be withdrawn.

Furthermore, claim 25 is dependent on claim 23 and as set forth above, Ervin et al. and the French patent do not teach a secondary backing having a thermoplastic material with a vinyl-based

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compound and at least one plasticizer. For this reason as well, this rejection and the rejection of claims 64 and 65 should be withdrawn.

In addition, the Examiner's reliance on the article entitled "Carpet Substrates" still does not support the Examiner's position. The Examiner is attempting to use a description of carpet tiles found in one reference and then argue that carpet tiles must have been taught in the Ervin et al. and the French patent. However, the Examiner cannot take a specific teaching in one reference and then argue that that specific teaching is automatically present in another reference. In fact, the Examiner's argument that the term "carpets" in Ervin et al. and the French patent automatically means carpet tiles is not supported by Ervin et al. At column 1, Ervin et al. clearly indicates that carpets are often installed over resilient backing or integral resilient backing such as a latex foam. As the Examiner should appreciate, carpet tiles are not generally installed over latex foam or any backing. Thus, Ervin et al. if anything teaches away from carpet tiles and is concerned with broadloom carpets which do use a resilient backing such as a latex foam. Accordingly, the Examiner has not shown any reason why one skilled in the art would conclude that the latex materials of Ervin et al. and the French patent would or could be used for carpet tiles since the Examiner has not explained how the specific ingredients used in Ervin et al. and the French patent would satisfy the dimensional stability requirements needed for modular carpet tiles and six-foot wide carpets. Accordingly, for these variety of reasons, this rejection should be withdrawn.

At page 7 of the Office Action, the Examiner rejects claims 29 and 30 under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as obvious over Ervin et al. and the French patent as applied to claim 23 above. The Examiner asserts that applicants

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previously grouped this rejection with the rejection of claim 25 and that applicants failed "to address said rejection directly." For the following reasons, this rejection is respectfully traversed.

Whether the rejection of these claims was grouped with claim 25 or not, applicants by doing so have addressed this rejection directly. Claims 29 and 30 recite specific densities which range from about 20 to about 45 lb/ft³ density. As indicated before, since these claims are dependent on claim 23, as explained above, the Ervin et al. and the French patent do not teach textile substrates wherein the secondary backing has a thermoplastic material comprising a vinyl-based compound along with at least one plasticizer. For this reason alone, claims 29 and 30 are also not taught or suggested by Ervin et al. or the French patent since, as the Examiner appreciates, the limitations of claim 23 are incorporated into claims 29 and 30.

Furthermore, as admitted by the Examiner at page 8 of the first Office Action, Ervin et al. or the French patent do not literally teach this carpet density and the Examiner can now only assert that it is "reasonable to presume" that Ervin et al. and the French patent have this density range. However, the Examiner has not provided any evidence to support this point especially since different materials are being used in the claimed invention when compared to Ervin et al. and the French patent. Thus, the Examiner has not explained how the density would be the same even though different materials are being used to form the textile substrate. Accordingly, for this reason as well, this rejection should be withdrawn.

The Examiner, then at page 7 of the Office Action, rejects claims 31 and 33 under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as being obvious over the Ervin et al. and the French patent as applied to claims 23 and 32 above. The Examiner further rejects claim 60 for these same reasons as applied to claim 58 above. The

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Examiner's only rebuttal to applicant's previous argument is that the Examiner is relying on her previous arguments and the arguments with respect to the independent claims. For the following reasons, this rejection is respectfully traversed.

Claim 31 is dependent on claim 23 and claim 33 is dependent on claim 32 which ultimately is dependent on claim 23. Furthermore, claim 60 is dependent on claim 58.

As indicated above, these dependent claims incorporate the limitations of the independent claims and thus, as explained above, Ervin et al. and the French patent do not teach a secondary backing containing a thermoplastic material having a vinyl-based compound along with at least one plasticizer. In addition, based on the fact that different materials are being used, the Examiner has not provided any foundation for concluding that textile substrates having different materials would have the same delamination strength as recited in these claims. Thus, it would be improper to take the position that Ervin et al. and the French patent would inherently have the same delamination strength. In addition, with respect to claim 60, which is dependent on claim 58, as explained above, Ervin et al. and the French patent do not teach or suggest a secondary backing casted on to a primary backing along with the remaining characteristics set forth in claim 58 which would also be present in claim 60. Accordingly, for these reasons, this rejection should be withdrawn.

At page 8 of the Office Action, the Examiner rejects claims 26, 27, and 63 under 35 U.S.C. § 103(a) as being unpatentable over Ervin et al. and the French patent, in view of Levinstein and Shoshkes. The Examiner relies on the same arguments as set forth in the first Office Action. For the following reasons, this rejection is respectfully traversed.

Claims 26 and 27 are dependent indirectly or directly on claim 23. Claim 63 is an independent claim. With respect to claims 26 and 27, these claims recite the presence of an

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adhesive or polymeric pre-coat layer or an intermediate backing layer. Since these claims are dependent on claim 23, they would also include the use of the secondary backing layer having a thermoplastic material containing at least one vinyl-based compound and at least one plasticizer. As indicated, Ervin et al. and the French patent do not teach such a textile substrate and accordingly, would therefore not teach the subject matter of claims 26 and 27 as well. Levinstein and Shoshkes are simply relied upon by the Examiner for purposes of showing basic components of a carpet and therefore do not teach or suggest the deficiencies of the primary references.

With respect to claim 63, which recites various components of the surface covering, the secondary backing is recited in claim 63 as being a thermoplastic material comprising a polymer or copolymer or vinyl compound and at least one plasticizer. As indicated, this is not taught nor suggested by Ervin et al. or the French patent and the secondary references do not cure these deficiencies. Accordingly, for these reasons, this rejection should be withdrawn as well.

The Examiner then rejects claims 26-28 and 63 under 35 U.S.C. § 103(a) as being unpatentable over Ervin et al. and the French patent, in view of Higgins. The Examiner relies on the previous arguments set forth in the first Office Action. As indicated by the Examiner, Higgins is merely relied upon for the use of various generic layers of a carpet. The Examiner still is primarily relying on Ervin et al. and the French patent to support the argument that modular carpet tiles and six-foot roll goods would be obvious. For the following reasons, this rejection is respectfully traversed.

The subject matter of claims 26 and 27 are described above and as indicated are ultimately dependent on claim 23. As indicated above, Ervin et al. and the French patent do not teach or even suggest the thermoplastic material set forth in these claims which incorporate the limitations of

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claim 23. Similarly, claim 28 would be patentable for the same reasons. Likewise, claim 63, as indicated above, would also be patentable for the same reasons since Ervin et al. and the French patent do not teach or suggest the invention recited in the these claims. Higgins et al. does not overcome any of the deficiencies since, as the Examiner indicates Higgins is relied upon to show basic layers. Therefore the combination of the primary references with the secondary reference would not teach or suggest the claimed invention. Accordingly, this rejection should be withdrawn as well.

At page 9 of the Office Action, the Examiner rejects claim 34 in view of the French patent in view of Oppermann et al. (U.S. Patent No. 5,407,617). The Examiner relies on the same reasons as before. The Examiner indicates that Oppermann is only relied upon for the use of a suitable amount of blowing agent. For the following reasons, this rejection is respectfully traversed.

Claim 34 recites a particular amount of blowing agent in the thermoplastic material since claim 34 is dependent ultimately on claim 23. Therefore, the blowing agent is in a particular type of thermoplastic material, namely, a thermoplastic material containing a vinyl-based compound along with at least one plasticizer. As indicated, Ervin et al. and the French patent do not teach or suggest such a thermoplastic material. Furthermore, Oppermann et al. would not even be combinable with the French patent. The French patent clearly relates to a latex material and Oppermann et al. clearly relates to a ~~non-latex~~ material. Accordingly, one skilled in the art would not combine these two teachings since the chemistry used to make the textile floor is radically different. In addition, contrary to the Examiner's comments at page 9 of the final Office Action, applicants at page 9 of the Amendment filed in response to the first Office Action specifically argued that Oppermann et al. relates to the use of practically no latex or PVC and thus it was not clear how one would

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combine Oppermann et al. with the latex teachings of the French patent. The Examiner has not addressed this argument. For this reason as well, the finality of this Office Action should be withdrawn. Accordingly, for the above reasons, this rejection should be withdrawn.

At page 9 of the Office Action, the Examiner then rejects claim 68 under 35 U.S.C. § 103(a) as being unpatentable over Ervin et al. and the French patent in view of Levinstein and Shoshkes references and/or in view of Higgins as applied to claim 63 above. For the following reasons, this rejection is respectfully traversed.

Claim 68 recites a secondary backing that has a closed-cell foam which is dependent on claim 63.

As the Examiner appreciates, claim 68 therefore would include the limitations of claim 63 which recites a thermoplastic material in the secondary backing having at least one vinyl-based compound and at least one plasticizer. This is not taught or suggested by Ervin et al. and the French patent alone or in combination with the secondary references. As indicated by the Examiner, the secondary references are merely relied upon to show various conventional layers. Thus, the secondary references would not overcome the deficiencies of the primary references. In addition, the arguments set forth above with respect to the Ervin et al. and the French patent not inherently showing closed-cell foam apply equally here and are incorporated herein. For these reasons, this rejection should be withdrawn as well.

Should the Examiner decide that a telephone conference would be helpful to discuss these issues (especially the issues concerning the reliance on new references and the request to remove the finality of this Office Action), the Examiner is requested to contact the undersigned.

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CONCLUSION

In view of the foregoing remarks, Applicants respectfully request the reconsideration of this application and the timely allowance of the pending claims.

If there are any other fees due in connection with the filing of this response, please charge the fees to deposit Account No. 50-0925. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such extension is requested and should also be charged to said Deposit Account.

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

23. (Twice Amended) A textile substrate comprising a primary backing with textile fibers extending upwardly from the backing and forming a surface:

and a secondary backing affixed to the bottom surface of the primary backing wherein said secondary backing comprises at least one thermoplastic material having polymeric microspheres dispersed therein, wherein said thermoplastic material comprises a polymer or copolymer of a vinyl compound, and at least one plasticizer.

63. (Twice Amended) A surface covering comprising a primary backing;
at least one adhesive or polymeric precoat layer located and affixed to the primary backing;

optionally at least one intermediate backing layer located beneath and affixed to the adhesive or polymeric pre-coat layer;

optionally at least one reinforcement material layer or stabilizer layer located and affixed beneath the adhesive or polymeric pre-coat layer or intermediate backing layer;

and a secondary backing comprising at least one thermoplastic material located and affixed to either the adhesive or polymeric pre-coat layer or one of the optional layers; and

wherein polymeric microspheres are dispersed in at least one of the layers except the primary backing, wherein said thermoplastic material comprises a polymer or copolymer of a vinyl compound, and at least one plasticizer.

VERSION WITH MARKINGS TO SHOW CHANGES MADE

23. (Twice Amended) A textile substrate comprising a primary backing with textile fibers extending upwardly from the backing and forming a surface:

and a secondary backing affixed to the bottom surface of the primary backing wherein said secondary backing comprises at least one thermoplastic material having polymeric microspheres dispersed therein, wherein said thermoplastic material comprises a polymer or copolymer of a vinyl compound, and at least one plasticizer.

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at least one adhesive or polymeric precoat layer located and affixed to the primary backing;

optionally at least one intermediate backing layer located beneath and affixed to the adhesive or polymeric pre-coat layer;

optionally at least one reinforcement material layer or stabilizer layer located and affixed beneath the adhesive or polymeric pre-coat layer or intermediate backing layer;

and a secondary backing comprising at least one thermoplastic material located and affixed to either the adhesive or polymeric pre-coat layer or one of the optional layers; and

wherein polymeric microspheres are dispersed in at least one of the layers except the primary backing, wherein said thermoplastic material comprises a polymer or copolymer of a vinyl compound, and at least one plasticizer.